



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:  
BYRON YOUNG

) Art Unit: 3673

) Examiner: Alexander Grosz

**RECEIVED**

Serial No.: 10/028,853

JUN 16 2004

Filing Date: December 21, 2001)

) Mailing Date: June 10, 2004 **OFFICE OF PETITIONS**

Title: Bag/Bed Assembly )

**PETITION TO WITHDRAW THE HOLDING OF  
ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION**

MAIL STOP PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RECEIVED**

JUN 28 2004

**GROL. 3600**

Dear Sir:

Applicant respectfully petitions the Assistant Commissioner for Patents to withdraw the abandonment of the above-identified patent application. In support of this petition, the Applicant states as follows:

1. Applicant filed his application for Letters Patent on December 21, 2001.

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being transmitted via Express Mail, addressed to: MAIL STOP PETITION, Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia, 22313-1450, on June 10, 2004. The Honorable Commissioner of Patents and Trademarks is requested to grant this paper that date as its filing date.

  
Gary K. Price (#45,024)

2. At the time of the filing of Applicant's application, the mailing address of the Applicant's practitioner was as follows:

Gary K. Price, Esq.  
111 S.E. Third Street, Suite 201  
Evansville, IN 47708  
Registration No. 45,024

3. During the prosecution of Applicant's application, the Applicant's practitioner changed his mailing address as follows:

Gary K. Price, Esq.  
Bowers Harrison, LLP  
25 N.W. Riverside Drive  
P.O. Box 1287  
Evansville, IN 47706-1287

The USPTO was properly advised of this change of address.

4. On or about July 21, 2003, Applicant received an Office Action on the pending application.

5. Applicant's practitioner received the July 21 Office Action at the correct mailing address of 25 N.W. Riverside Drive, P.O. Box 1287, Evansville, IN 47706-1287.

6. By correspondence dated October 17, 2003, Applicant timely filed his Amendment and Response to the pending Office Action dated July 21, 2003.

7. By correspondence dated May 26, 2004, Applicant's practitioner received Notice of Abandonment for failure to timely pay the issue fee and publication fee.

8. The Notice of Abandonment was correctly mailed to Applicant's practitioner's correct address at 25 N.W. Riverside Drive, P.O. Box 1287, Evansville, IN 47706-1287 however, the Notice included an incorrect serial number 10/028,852, instead of the correct serial number 10/028,853. A copy of the Notice of Abandonment is attached hereto.

9. Neither Applicant or Applicant's practitioner received any correspondence from the U. S. Patent and Trademark Office following Applicant's Amendment and Response dated October 17, 2003, responding to the Office Action dated July 21, 2003.

10. Applicant's practitioner has reviewed his files and has not located a copy of the Notice of Allowance which was said to have been previously forwarded to Applicant's practitioner. Further, Applicant's practitioner has been unable to locate any reference to receipt of the Notice of Allowance which was said to have been forwarded to Applicant's practitioner.

11. There was in place a business routine for performing the function of receiving, docketing and maintaining Office communications from the U. S. Patent and Trademark Office namely as follows: Applicant's practitioner received and opened all mail correspondence from the U.S. Patent and Trademark Office; upon receipt of any communication from the U.S. Patent and Trademark Office, the Applicant's practitioner would calendar receipt of the communication, list a projected date when a response if necessary would be prepared, and would list the date any such response would be due.

12. In the instant case, a Notice of Allowance was not received by Applicant's practitioner and therefore no entries made. See Declaration of Gary K. Price, attached hereto.

13. The last entry made by Applicant's practitioner in this matter was noting the receipt of the July 21, 2003 Office Action and the filing of a response to same on October 17, 2003.

14. It is uncertain whether the 1 – digit error in the serial number (as displayed on the Notice of Abandonment) contributed to Applicant's practitioner not receiving the Notice of Allowance.

15. It is uncertain whether Applicant's practitioner's earlier change of address contributed to not receiving the Notice of Allowance however, as previously stated, prior communications from the U. S. Patent and Trademark Office as well as the Notice of Abandonment had been correctly addressed to Applicant's practitioner's current address of 25 N.W. Riverside Drive, P.O. Box 1287, Evansville, IN 47706-1287.

16. This is Applicant's first request to withdraw a holding of abandonment in this matter.

WHEREFORE, Applicant respectfully requests the above-identified application to be withdrawn from abandonment and remail the Notice of Allowance.

The Examiner is invited to telephone the undersigned if there are any questions in regard to the above.

Respectfully submitted,

By 

Gary K. Price, Esq.  
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P.O. Box 1287  
Evansville, IN 47706-1287  
Telephone: (812) 426-1231  
Facsimile: (812) 464-3676  
Attorney for Applicant,  
Byron Young

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UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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10/028,852

EXAMINER
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ART UNIT	PAPER NUMBER
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#10  
DATE MAILED:

### NOTICE OF ABANDONMENT

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_
- ☐ A reply (with Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_ which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.)
- ☐ A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- ☐ No reply has been received.
- ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).
- ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required, by 37 CFR 1.18(d) is \$\_\_\_\_\_.
- ☒ The issue fee and publication fee, if applicable, have not been received.
- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-87).
- ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
- ☐ No corrected drawings have been received.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below: \_\_\_\_\_

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.